

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VICTOR P. CAPALDI,
Plaintiff,

CIVIL ACTION
NO: 04-10843-JLT

vs.

F/V GEORGIE J, her engines, boilers,
equipment, machinery, tackle,
furnishings, apparel, appurtenances,
etc., including but not limited to,
its commercial fishing licenses, permits,
limited entry rights, quotas, moratorium
permits/licenses, and all other fishing
rights, history, privileges, or
entitlements arising from, issued to,
attaching to, or appurtenant to said
vessel, *in rem*
Defendant.

CLAIMANT'S MOTION TO STAY THE PROCEEDINGS

Now comes the Claimant, AGA Fishing Corporation, in
the above-entitled action, by and through its undersigned
counsel, Clinton & Muzyka, P.C., and respectfully moves
this Honorable Court to stay the proceedings in this
action.

As grounds in support of this motion, the Claimant
submits the following for the Court's consideration.

ARGUMENT

The plaintiff sustained personal injuries on or about
November 25, 2003 while working onboard the F/V GEORGIE J,

which is owned and operated by the Claimant. On or about April 28, 2004, the plaintiff commenced this *In Rem* action against the F/V GEORGIE J pursuant to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims. The plaintiff also commenced an *In Personam* action against the Claimant to recover for his personal injuries. The *In Personam* action is also pending before this Honorable Court (Civil Action No: 04-10755).

Upon plaintiff's motion and at the direction of this Court, the F/V GEORGIE J was arrested by the United States Marshall on May 4, 2004. The vessel remains in the custody of the United States Marshall and is incurring *custodial legis* expenses. The vessel was arrested in order to obtain security should the plaintiff obtain a favorable Judgment against the *In Rem* defendant for his personal injuries. On April 5, 2004 and before the vessel was arrested by the United States Marshall, the Claimant entered into a binding and enforceable Purchase & Sale Agreement with a potential buyer. The Purchase & Sale Agreement is for \$900,000.00, which is the vessel's fair market value.

The plaintiff is alleging \$10,000,000.00 in damages as a result of his personal injuries. The insurance coverage available to AGA Fishing Corporation for the

plaintiff's personal injuries is limited. There is a primary and excess Protection & Indemnity Policy. The primary and excess policies are draw-down policies. As such, the amount of coverage is reduced by any and all costs for defending this action, as well as the pending *In Personam* action. AGA Fishing Corporation's maintenance and cure obligation have already exhausted the coverage in the primary policy.

In addition to the limited insurance proceeds, the F/V GEORGIE J has a \$130,000.00 outstanding preferred ship's mortgage. The preferred ship's mortgage is personally guaranteed by the Antonette Jones, the President of AGA Fishing Corporation.

Counsel for the parties have met to discuss settlement, but were unable to reach a mutual agreement on the settlement principle and procedure for this claim. The Claimant requests that this action, as well as the *In Personam* action, be stayed until settlement negotiations are exhausted. The Claimant also requests the Court's assistance in resolving the procedural difficulties between counsel. If the Claimant is required to continue to defend these actions, then the defense costs will increase and the amount of available insurance proceeds will be further depleted. There is no benefit to any of

the parties, if the amount of available insurance proceeds is further depleted.

WHEREFORE, the Claimant of the F/V GEORGIE J prays that this Honorable Court stay this action and the pending *In Personam* action until the parties have an opportunity to exhaust all settlement possibilities.

The Claimant requests a hearing at the Court's earliest convenience.

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/ Thomas J. Muzyka_
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Dated: June 28, 2004